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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,320	11/25/2003	Michael Lynn Walker	141491.00000	9306
25207	7590	09/27/2004	EXAMINER	
JASON A. BERNSTEIN POWELL, GOLDSTEIN, FRAZER & MURPHY LLP 16TH FLOOR 191 PEACHTREE STREET, NE ATLANTA, GA 30303-1736			KRAMSKAYA, MARINA	
			ART UNIT	PAPER NUMBER
			2858	

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/722,320

Applicant(s)

WALKER, MICHAEL LYNN

Examiner

Marina Kramskaya

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/25/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show a properly connected schematic as described in the specification. Figures 2 and 3 contain numerous floating points, particularly obscuring the function of the switch as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "pole 31" as on page 10 line 6 and "ground electrical conductor" as on page 10 line 6. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Marked-up Drawings" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

### ***Specification***

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Objections***

5. Claim 8 is objected to because of the following informalities: In Claim 8 (c), the switch is engaged to its **first** position from **OFF**. In Claim 8 (d), the switch is engaged to its **second** position from **OFF**. A step is missing in between Claim 8 (c) and Claim 8 (d); it is unclear how the switch returned to **OFF** from its **first** position. Appropriate correction is required.

The following modification is suggested: addition of a momentary switch as in previous claims.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Wong et al. (US 6,218,844). Wong discloses a testing device for a three-conductor outlet, where the branch circuit is associated with a circuit breaker (FIG. 2). The device embodies a two-pole-momentary-contact test electrical circuit described by Wong et al.

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as a switching mechanism with a switch **70** mounted on the outer shell of the device and a one shot timer circuit **40** (column 3, line 60-61), giving the switch its momentary-contact capabilities. The indicator is a light emitting diode **28**, that responds to the arc fault and/or ground fault test. The LED is initially on if there is power flowing through the branch circuit. When the test circuit is energized by throwing the switch **70** or **72**, the light will extinguish.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spear (US 3,952,244) in view of Wong et al. (US 6,218,844).

Spear discloses a testing device for a three-conductor outlet consisting of neutral, active, and ground conductors, disposed to a circuit breaker with the following characteristics:

- (a) a double pole normally open switch **S1**;
- (b) a light emitting diode **D8** having an anode and cathode;
- (c) said light emitting diode's anode connectively disposed to the electrically active conductor via one pole of said normally open switch (FIG. 2);
- (d) said normally open switch's other pole connectively disposed to

the electrically neutral conductor (FIG. 2);

(e) said light emitting diode's cathode connectively disposed to the electrical ground conductor (FIG. 2)

Spear does not disclose a light emitting diode that is activated by a switch.

Rather, Spear uses a lamp **L3** to test the presence of power in the circuit. When no power is present **L3** extinguishes. Spear does not disclose a switch that is activated to cause the test light to extinguish.

Wong discloses a switch **70** or **72**, that when activated causes the light emitting diode **28** to extinguish.

It would have been obvious to include in Spear's device a switch that when activated would cause the light emitting diode to extinguish as taught by McClain in order to have operator control rather than waiting for proper conditions to be met before the indicator light would extinguish due to those conditions.

As to Claim 2, Spear discloses the claimed invention except for the shape of the housing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a rectangular housing since such a modification would have involve a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

10. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spear in view of Wong as applied to claim 1 above, and further in view of Mason Jr. et al (US 2003/0107854).

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Spear and Wong disclose a testing device as explained above.

Spear does not disclose a spring-loaded toggle switch, but rather spring-loaded push button.

Mason Jr. et al. disclose spring-loaded toggle switch.

Spear's spring-loaded push button switch and Mason's spring-loaded toggle switch (paragraph 0043) are analogous art because they are from a similar problem solving area. The two types of switches can perform the same function and are interchangeable.

11. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spear in view of Wong.

Spear discloses an electric circuit-testing device with the following characteristics:

- a) a geometric housing **13**;
- b) a three conductor electrical cord **11** disposed on one end of said geometric housing **13**;
- c) said three conductor electrical cord **13** having one electrically active conductor **23**, one electrical neutral conductor **25** and one electrical ground conductor **24**;
- d) a normally open double pole momentary switch **27** mounted onto said geometric housing;
- e) a light emitting diode **D8** having an anode and a cathode;
- f) an indicator light **L3** is disposed to said electrical ground conductor;
- i) the light-emitting device emitting visible light via said electrically active conductor and said electrical ground conductor connections;



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Spear does not disclose:

- g) electrical neutral conductor connectively disposed to one pole of said momentary switch;
- h) electrically active conductor connectively disposed to the other pole of said momentary switch;
- j) said momentary switch being activated momentarily short-circuits said electrically active and said electrically neutral conductors;
- k) said activated momentary switch causing said light emitting device to extinguish emitting light.

Wong discloses:

A switch **70** situated between the active and neutral conductors (**20 & 22**). When the switch is activated, active and neutral conductors are shorted, causing the light-emitting device to extinguish (column 4 lines 14-24).

Spear does not disclose the light-emitting device as a light emitting diode, but rather a light bulb.

Wong uses a light emitting diode **28** as the light-emitting device.

It would have been obvious to modify Spear to replace the simple light bulb by a light emitting diode in order to have a light source that has a longer life span, gives off less heat, and is less fragile. Further it would have been obvious to include in Spear a switch situated between the active and neutral conductors, as disclosed in Wong, in order to perform various tests all in one device.

12. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al. in view of Mason Jr. et al.. Wong et al. disclose a method and device for testing a

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three conductor electrical outlet (FIG. 2), where the branch circuit is associated with a circuit breaker, to indicate the current energized (and ground fault/arc fault state of the circuit breaker (page 1, abstract). When the device **30** is inserted into an outlet via a three-prong plug **32**, the LED **28** illuminates (column 4, lines 25-26). When switch **70** or **72** is activated the light **28** disengages (column 4, lines 14-24). Switch **70** and **72** test for ground fault and arc fault respectively.

Wong et al. does not disclose a three-position actuator switch.

Mason Jr. et al. discloses three position switch **10**. The first position from **OFF** is when side **12** is pressed, and the second position from **OFF** is when side **14** is pressed (paragraph 0018).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a single switch as taught by Mason, to combine the function of two switches into one.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brown, Pub. No. US 2002/0057089, discloses a three- prong circuit breaker with a plurality of light indicators for the status of an outlet.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Kramskaya whose telephone number is (571)

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272-2146. The examiner can normally be reached on Monday-Friday, 7:00am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nancy Le can be reached on (571) 272 - 2233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MK

  
JAY PATIDAR  
PRIMARY EXAMINER

Marina Kramskaya  
Examiner  
Art Unit 2858

